

P-405/CP-89-1080 ORDER DENYING CLARIFICATION AND GRANTING TIME  
EXTENSION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Petition  
for Extended Area Service  
From the Sherburn Exchange to  
the Fairmont Exchange

ISSUE DATE: May 10, 1991

DOCKET NO. P-405/CP-89-1080

ORDER DENYING CLARIFICATION AND  
GRANTING TIME EXTENSION

**PROCEDURAL HISTORY**

On December 6, 1989, subscribers in the Sherburn exchange filed a petition with the Commission for Extended Area Service (EAS) to the Fairmont exchange.

Between then and April 27, 1990, Central Telephone Company (Centel), the telephone company serving the Sherburn and Fairmont exchanges, and the Minnesota Department of Public Service (the Department) submitted various filings regarding traffic studies, costs, and rates for the proposed EAS.

On April 27, 1990, the new EAS statute, Minn. Stat. § 237.161 (1990), came into effect.

On October 30, 1990, the Commission issued its ORDER REQUIRING COST STUDIES AND PROPOSED RATES AND ESTABLISHING COMMENT PERIOD in this matter.

On November 19, 1990, the Department of Public Service (the Department) filed its Petition for Clarification of the October 30, 1990 Order.

On February 8, 1991, the Department requested a 60-day extension of time to file its report and recommendation regarding the cost studies and proposed rates that had been ordered in the October 30, 1990 Order.

On April 23, 1991, the Commission met to consider these matters.



## FINDINGS AND CONCLUSIONS

### A. Petition for Clarification

In its October 30, 1990 Order, the Commission applied the provisions of the recently enacted extended area service (EAS) legislation [Minn. Stat. § 237.161 (1990)] to the Sherburn petition for EAS to the Fairmont exchange. One issue in this case was whether Sherburn met the adjacency requirement of the statute, i.e. whether it is contiguous to an exchange or local calling area to which extended area service is requested in the petition, as required by the statute. As part of the analysis leading to its conclusion that Sherburn met the adjacency requirement, the Commission's Order indicated that two or more exchanges which all have EAS to each other constitute a "local calling area" as that term is used in the EAS statute.

In its Petition for Clarification, the Department expressed the concern that the Commission's definition of the statutory phrase "local calling area" may be "beginning down the path of creating rules outside of a rulemaking proceeding." The Commission disagrees and will deny the Department's Petition for Clarification.

The Minnesota Court of Appeals has determined that the Commission may formulate administrative policy through case by case determination rather than rulemaking.

The MPUC is not making a "statement of general applicability" and thus is not engaged in rulemaking.... "Administrative policy may be formulated by promulgating rules on a case-by-case determination," and the agency has discretion to decide which method is appropriate. Bunge Corp. v. Commissioner of Revenue, 305 N.W.2d 779, 785 (Minn. 1981). In the Matter of the Application of Northwestern Bell Telephone Company, 371 N.W.2d 563, 567-68 (Minn. Ct. App. 1985).

In its October 30, 1990 Order, the Commission did not adopt a statement of general applicability but exercised its authority on a case by case basis to determine how the provisions of the new EAS statute applied to the facts of the Sherburn application. The Commission exercised its discretion to formulate administrative policy on a case-by case basis, rather than proceeding to rulemaking. In so doing, the Commission acted consistent with its authority as recognized by the Court of Appeals in the cited case, In the Matter of the Application of Northwestern Bell Telephone Company, supra.

In exercising its statutory responsibilities to regulate utilities in Minnesota, the Commission is regularly required to

interpret and apply the provisions of pertinent statutes and regulations to the facts of individual cases. In so doing, the Commission does not engage in illegal rulemaking. In this case, the Commission's interpretation of the statutory term "local

calling area" is consistent with the plain meaning of the EAS statute and is, hence, not illegal rulemaking.<sup>1</sup>

The case by case method utilized by the Commission in its October 30 Order did not produce a statement of general applicability and future effect regarding the term "local calling area" as does a rulemaking. The definition adopted by the Commission in deciding the Sherburn matter binds only the parties to that proceeding.

#### B. Request for Time Extension

The Department requested a 60-day extension of time to file its report regarding the cost studies and proposed rates that had been ordered in the October 30, 1990 Order. In support of its request, the Department stated that it had just recently received a revised cost study from Centel that met the requirements of the new EAS statute as well as responses to information requests from Centel.

The Commission finds that the Department's request is reasonable and will grant it. The extension is needed to allow the Department to analyze these filings and prepare its report and recommendation in this matter. The Department will file its report and recommendation within 60 days of the date of this Order.

#### ORDER

1. The Petition for Clarification filed by the Minnesota Department of Public Service (the Department) is denied.
2. The Department's request for a 60-day extension of time to file its report and recommendation regarding the cost studies and proposed rates filed in this matter is granted. The Department shall file such report and recommendation within 60 days of this Order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster

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<sup>1</sup> The Commission notes that in its Petition for Clarification the Department states that it does not disagree with the definition of local calling area that the Commission adopted in its October 30 Order.

Executive Secretary

(S E A L)